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AT SEATTLE
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

LESLIE KILLINGSWORTH,

Defendant.

No.

INFORMATION

(Felony)

The United States Attorney charges that:

COUNT 1

(Wire Fraud)

A. INTRODUCTION

At all times relevant to this information:

1. Holmes Harbor Sewer District ("HHSD") was a municipal corporation and political subdivision of the State of Washington, located on Whidbey Island, in Island County, Washington. HHSD was primarily engaged in providing water and sewer services to approximately 200 homes on Whidbey Island.

2. On about October 26, 2000, HHSD issued \$20,025,000 in tax-exempt municipal bonds. The purported purpose of the bond issuance was to fund a portion of the costs for a development called the Silver Sound Corporate Center, a proposed commercial office complex located within the boundaries of the City of Everett,

1 | Snohomish County, Washington. Bond proceeds were to be used to purchase a portion of
2 | the development land and to build public infrastructure such as sewer, drainage and roads
3 | for the project.

4 | 3. The bonds issued by HHSD were sold through broker-dealers and
5 | purchased by approximately 200 investors. In the bond documents various
6 | representations were made by parties to the transaction concerning the safety of the
7 | investment, the nature and status of the development project, the restricted uses of the
8 | bond proceeds, and repayment of the bonds.

9 | 4. LESLIE KILLINGSWORTH, the defendant herein, was an employee and
10 | shareholder of Datum Pacific Inc., with its headquarters in Coupeville, Washington, and a
11 | shareholder of its parent company, Adams and Clark, of Spokane, Washington. Mr.
12 | KILLINGSWORTH was a licensed Washington State Professional Engineer. He acted as
13 | HHSD's Engineer on a variety of projects, including the Silver South Corporate Center
14 | project and the bond issuance. In that capacity, Mr. KILLINGSWORTH had a fiduciary
15 | duty to protect HHSD. In particular, Mr. KILLINGSWORTH was to advise HHSD of the
16 | functionality of the infrastructure for the Silver Sound project, the project's progress, and
17 | to approve all payments of bond proceeds to the developer. Mr. KILLINGSWORTH
18 | understood that bond proceeds could only be used to pay for development work that had
19 | been completed on the public infrastructure portion of the project, and that extension of
20 | credit or payments for future work was not allowed.

21 | 5. Mr. KILLINGSWORTH and his company, Datum Pacific, performed work
22 | on the Silver Sound project independent of work in his capacity as HHSD's Engineer.
23 | Mr. KILLINGSWORTH and his companies, Datum Pacific and Adams and Clark, had
24 | also performed past work for the same developer that was unrelated to the Silver Sound
25 | project. At the time of Mr. KILLINGSWORTH's work on the Silver Sound project, his
26 | companies had outstanding invoices for that work which had not been paid by the
27 | developer.
28 |

1 **B. THE SCHEME AND ARTIFICE TO DEFRAUD**

2 6. In approximately November and early December 2000, after closing of the
3 bond issuance, Mr. KILLINGSWORTH and others assembled a request to HHSD for
4 payment of bond proceeds to the developer, purportedly to reimburse the developer for
5 the cost of work already performed in developing the public portion of the Silver Sound
6 project. It was called Pay Request No. 3 and sought payment of approximately \$902,000.
7 Pay Request No. 3 and various invoices attached thereto were false and fraudulent in four
8 material respects, as Mr. KILLINGSWORTH knew. First, previously issued Datum
9 Pacific invoices relating to projects other than the Silver Sound Corporate Center were
10 fraudulently rewritten to appear that they reflected work done on the Silver Sound project.
11 Second, Datum Pacific invoices for work which had been performed for the Silver Sound
12 project were fraudulently rewritten to change the scope of work, date of work and
13 payment histories to make them appear that the work had occurred recently. Third, an
14 individual invoice from a contractor called W. H. LLC, for about \$441,000, described
15 work that had not been performed at all. Fourth, an invoice from the developer's
16 company, Silver Legacy, Inc., in the amount of approximately \$277,000, claimed payment
17 for work that had not occurred since the previous pay request.

18 7. Mr. KILLINGSWORTH, in his capacity as HHSD's Engineer, signed and
19 certified the accuracy and authenticity of Pay Request No. 3. At the time he did so, the
20 developer owed Mr. KILLINGSWORTH and Datum Pacific for substantial past-due bills,
21 and Mr. KILLINGSWORTH hoped and expected that the developer would pay those bills
22 from the proceeds of Pay Request No. 3.

23 8. At a meeting on December 7, 2000, of the HHSD Board of Commissioners,
24 Mr. KILLINGSWORTH and the developer submitted the false and fraudulent Pay
25 Request No. 3. The Board of Commissioners declined to pay it because by that time the
26 Board had discovered some of the problems with the Silver Sound project.

27 9. At a time shortly thereafter, the developer contacted Mr.
28 KILLINGSWORTH and directed him to retrieve the rejected pay request from the

Chairman of the HHSD Board of Commissioners. Mr. KILLINGSWORTH attempted to retrieve it but failed.

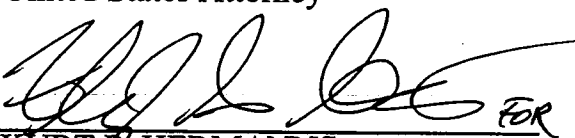
C. EXECUTION OF THE SCHEME AND ARTIFICE TO DEFRAUD

10. On or about November 28, 2000, at Whidbey Island, Washington, within the Western District of Washington, and elsewhere, LESLIE KILLINGSWORTH and others, having devised and intended to devise the above-described scheme and artifice to defraud HHSD of its right to Mr. KILLINGSWORTH's honest services, and for obtaining money and property by means of false and fraudulent pretenses, representations and promises, did, for the purpose of executing such scheme and artifice, knowingly and willfully transmit and cause to be transmitted, by wire communication in interstate and foreign commerce, writings, signs, signals, pictures and sounds, to wit: Mr. KILLINGSWORTH sent portions of fraudulent Pay Request No. 3 by facsimile communication from his office in Washington State to the bond underwriters in Walnut Creek, California.

All in violation of Title 18, United States Code, Sections 1343, 1346 and 2.

DATED this 23rd day of March, 2004.


for JOHN McKAY
United States Attorney


KURT P. HERMANN'S
Assistant United States Attorney


FLOYD G. SHORT
Assistant United States Attorney